

# **ASIC CLASS ORDER [CO 09/1084]**

## **EXPLANATORY STATEMENT**

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 09/1084] under subsections 655A(1), 741(1) and 1020F(1) of the *Corporations Act 2001* (the Act).

Subsection 655A(1) provides that ASIC may declare that Chapter 6 applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration. Subsection 741(1) provides that ASIC may declare that Chapter 6D applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration. Subsection 1020F(1) provides that ASIC may declare that Chapter 7 applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

### **1. Background**

The Act requires that an issuer must not cite a statement made by a person in a prospectus or PDS, unless the person has consented to that statement being included in the form and context in which it appears.

ASIC Class Order [CO 07/428] declares that sections 716 and 1013K of the Act are modified so that a disclosure document or PDS for specified financial products may include credit rating references from Standard & Poor's, Moody's Investor Service and Fitch Ratings without the consent of those credit rating agencies.

ASIC Class Order [CO 07/429] declares that sections 636 and 638 of the Act are modified so that a bidder's statement or target's statement may include credit rating references from Standard & Poor's, Moody's Investor Service and Fitch Ratings without the consent of those credit rating agencies.

Following public consultation, on 12 November 2009 ASIC announced its decision to withdraw its relief allowing credit ratings to be cited without consent in a disclosure document, PDS, target's statement or bidder's statement dated after 1 January 2010.

### **2. Purpose of the class order**

Class Order [CO 09/1084] will withdraw relief that allows credit ratings to be cited without consent in a disclosure document, PDS, target's statement or bidder's statement that is dated after 1 January 2010. The withdrawal of this relief will not affect a document that is dated before 1 January 2010.

As liability for the content of a disclosure document, PDS, target's statement or bidder's statement only attaches to persons who have contented to having their statements cited, the relief in Class Orders [CO 07/428] and [CO 07/429] have implications for the accountability of credit rating agencies.

By withdrawing relief, ASIC is allowing credit rating agencies to control the use and presentation of their ratings in disclosure by giving or withholding consent.

### **3. Operation of the class order**

ASIC Class Order [CO 09/1084] varies Class Orders [CO 07/428] and [CO 07/429] to remove notional provisions inserted into the Act that allow an issuer to cite a credit rating from Standard & Poor's, Moody's Investor Service and Fitch Ratings in disclosure documents, PDSs, target's statements and bidder's statements without the consent of those credit rating agencies.

The variations will not affect a document that is dated before 1 January 2010.

### **4. Commencement**

Class Order [CO 09/1084] commences on the later of:

- (a) the date the instrument is registered under the *Legislative Instruments Act 2003*; and
- (b) 1 January 2010.

### **5. Consultation**

The modifications in Class Order [CO 09/1084] were the subject of public consultation in Consultation Paper 117 *Consent to quote credit ratings in disclosure documents and PDSs* (CP 117). Submissions were received from credit rating agencies, professional bodies and an investment bank.